

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## **HOUSE CONCURRENT RESOLUTION 2024**

### **A CONCURRENT RESOLUTION**

**PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI,  
SECTIONS 12, 28, 30, 35, 37, 38, 40 AND 41, CONSTITUTION OF ARIZONA.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the  
2 Senate concurring:

3 1. Article VI, sections 12, 28, 30, 35, 37, 38, 40 and 41,  
4 Constitution of Arizona, are proposed to be amended as follows if approved  
5 by the voters and on proclamation of the Governor:

6 12. Superior court: term of office

7 Section 12. A. Judges of the superior court in counties  
8 having a population of less than ~~two~~ SIX hundred ~~fifty~~ thousand  
9 persons according to the most recent United States census shall  
10 be elected by the qualified electors of their counties at the  
11 general election. They shall hold office for a regular term of  
12 four years except as provided by this section from and after the  
13 first Monday in January next succeeding their election, and  
14 until their successors are elected and qualify. The names of  
15 all candidates for judge of the superior court in such counties  
16 shall be placed on the regular ballot without partisan or other  
17 designation except the division and title of the office.

18 B. The governor shall fill any vacancy in such counties  
19 by appointing a person to serve until the election and  
20 qualification of a successor. At the next succeeding general  
21 election following the appointment of a person to fill a  
22 vacancy, a judge shall be elected to serve for the remainder of  
23 the unexpired term.

24 Judges of the superior court in counties having a  
25 population of ~~two~~ SIX hundred ~~fifty~~ thousand persons or more  
26 according to the most recent United States census shall hold  
27 office for a regular term of four years except as provided by  
28 this article.

29 28. Justices and judges: dual office holding:  
30 political activity: practice of law

31 Section 28. Justices and judges of courts of record shall  
32 not be eligible for any other public office or for any other  
33 public employment during their term of office, except that they  
34 may assume another judicial office, and upon qualifying  
35 therefor, the office formerly held shall become vacant. No  
36 justice or judge of any court of record shall practice law  
37 during his continuance in office, nor shall he hold any office  
38 in a political party or actively take part in any political  
39 campaign other than his own for his reelection or retention in  
40 office. Any justice or judge who files nomination papers for an  
41 elective office, other than for judge of the superior court or a  
42 court of record inferior to the superior court in a county  
43 having a population of less than ~~two~~ SIX hundred ~~fifty~~ thousand  
44 persons according to the most recent United States census,  
45 forfeits his judicial office.

30. Courts of record

Section 30. A. The supreme court, the court of appeals and the superior court shall be courts of record. Other courts of record may be established by law, but justice courts shall not be courts of record.

B. All justices and judges of courts of record, except for judges of the superior court and other courts of record inferior to the superior court in counties having a population of less than ~~two~~ SIX hundred ~~fifty~~ thousand persons according to the most recent United States census, shall be appointed in the manner provided in section 37 of this article.

35. Continuance in office; continued existence of offices; application of prior statute and rules

Section 35. A. All justices, judges, justices of the peace and officers of any court who are holding office as such by election or appointment at the time of the adoption of this section ~~OR ANY AMENDMENT TO THIS SECTION~~ shall serve or continue in office for the respective terms for which they are so elected or for their respective unexpired terms, and until their successors are elected or appointed and qualify or they are retained in office pursuant to section 38 of this article; ~~provided, however,~~ EXCEPT that any justice or judge elected at the general election at which this section is adopted shall serve for the term for which he is so elected. The continued existence of any office heretofore legally established or held shall not be abolished or repealed by the adoption of this article. The statutes and rules relating to the authority, jurisdiction, practice and procedure of courts, judicial officers and offices in force at the time of the adoption of this article and not inconsistent herewith, shall, so far as applicable, apply to and govern such courts, judicial officers and offices until amended or repealed.

B. All judges of the superior court holding office by appointment or retention in counties with a population of ~~two~~ SIX hundred ~~fifty~~ thousand persons or more according to the most recent United States census at the time of the adoption of this amendment ~~OR ANY SUBSEQUENT AMENDMENT~~ to this section shall serve or continue in office for the respective terms for which they were appointed. Upon an incumbent vacating the office of judge of the superior court, whether by failing to file a declaration for retention, by rejection by the qualified electors of the county or resignation, the appointment shall be pursuant to section 37 of this article.

37. Judicial vacancies and appointments: initial  
terms: residence: age

Section 37. A. Within sixty days from the occurrence of a vacancy in the office of a justice OF THE SUPREME COURT or A judge of ~~any~~ AN INTERMEDIATE APPELLATE court of record, ~~except for vacancies occurring in the office of a judge of the superior court or a judge of a court of record inferior to the superior court,~~ the commission on appellate court appointments, ~~if the vacancy is in the supreme court or an intermediate appellate court of record,~~ shall submit to the governor the names of not less than three persons nominated by it to fill such vacancy, no more than two of whom shall be members of the same political party unless there are more than four such nominees, in which event not more than sixty ~~percentum~~ PER CENT of such nominees shall be members of the same political party.

B. Within sixty days from the occurrence of a vacancy in the office of a judge of the superior court or a judge of a court of record inferior to the superior court except for vacancies occurring in the office of a judge of the superior court or a judge of a court of record inferior to the superior court in a county having a population of less than ~~two~~ SIX hundred ~~fifty~~ thousand persons according to the most recent United States census, the commission on trial court appointments for the county in which the vacancy occurs shall submit to the governor the names of not less than three persons nominated by it to fill such vacancy, no more than two of whom shall be members of the same political party unless there are more than four such nominees, in which event no more than sixty per ~~centum~~ CENT of such nominees shall be members of the same political party. A nominee shall be under sixty-five years of age at the time ~~his~~ THE NOMINEE'S name is submitted to the governor. Judges of the superior court shall be subject to retention or rejection by a vote of the qualified electors of the county from which they were appointed at the general election in the manner provided by section 38 of this article.

C. A vacancy in the office of a justice or a judge of such courts of record shall be filled by appointment by the governor without regard to political affiliation from one of the nominees whose names ~~shall be~~ ARE submitted to ~~him as hereinabove provided~~ THE GOVERNOR PURSUANT TO SUBSECTION A OR B. In making the appointment, the governor shall consider the diversity of the state's population for an appellate court appointment and the diversity of the county's population for a trial court appointment, however, the primary consideration shall be merit. If the governor does not appoint one of such

nominees to fill such vacancy within sixty days after their names are submitted to the governor by such commission, the chief justice of the supreme court forthwith shall appoint on the basis of merit alone without regard to political affiliation one of such nominees to fill such vacancy. If such commission does not, within sixty days after such vacancy occurs, submit the names of nominees ~~as hereinabove provided~~ PURSUANT TO SUBSECTION A OR B, the governor shall have the power to appoint any qualified person to fill such vacancy at any time thereafter prior to the time the names of the nominees to fill such vacancy are submitted to the governor ~~as hereinabove provided~~ PURSUANT TO SUBSECTION A OR B. Each justice or judge so appointed shall initially hold office for a term ending sixty days following the next regular general election after the expiration of a term of two years in office. Thereafter, the terms of justices or judges of the supreme court and the superior court shall be as provided by this article.

D. A person appointed to fill a vacancy on an intermediate appellate court or another court of record now existing or hereafter established by law shall have been a resident of the counties or county in which that vacancy exists for at least one year ~~prior to his~~ BEFORE THE PERSON'S appointment, in addition to possessing the other required qualifications. A nominee shall be under sixty-five years of age at the time ~~his~~ THE NOMINEE'S name is submitted to the governor.

38. Declaration of candidacy; form of judicial ballot; rejection and retention; failure to file declaration

Section 38. A. A justice or judge of the supreme court or an intermediate appellate court shall file in the office of the secretary of state, and a judge of the superior court or other court of record including such justices or judges who are holding office as such by election or appointment at the time of the adoption of this section OR ANY AMENDMENT TO THIS SECTION, except for judges of the superior court and other courts of record inferior to the superior court in counties having a population of less than ~~two~~ SIX hundred ~~fifty~~ thousand persons, according to the United States census, shall file in the office of the clerk of the board of supervisors of the county in which he regularly sits and resides, not less than sixty nor more than ninety days ~~prior to~~ BEFORE the regular general election next preceding the expiration of his term of office, a declaration of his desire to be retained in office, and the secretary of state shall certify to the several boards of supervisors the

1 appropriate names of the candidate or candidates appearing on  
2 such declarations filed in his office.

3 B. The name of any justice or judge whose declaration is  
4 filed as provided in this section shall be placed on the  
5 appropriate official ballot at the next regular general election  
6 under a nonpartisan designation and in substantially the  
7 following form:

8 Shall \_\_\_\_\_, (Name of justice or judge) of the  
9 \_\_\_\_\_ court be retained in office? Yes \_\_\_ No \_\_\_ (Mark X  
10 after one).

11 C. If a majority of those voting on the question votes  
12 "No," ~~then,~~ upon the expiration of the term for which such  
13 justice or judge was serving, a vacancy shall exist, which shall  
14 be filled as provided by this article. If a majority of those  
15 voting on the question votes "Yes," such justice or judge shall  
16 remain in office for another term, subject to removal as  
17 provided by this constitution.

18 D. The votes shall be counted and canvassed and the  
19 result declared as in the case of state and county elections,  
20 whereupon a certificate of retention or rejection of the  
21 incumbent justice or judge shall be delivered to ~~him~~ THE  
22 INCUMBENT by the secretary of state or the clerk of the board of  
23 supervisors, as the case may be.

24 E. If a justice or judge fails to file a declaration of  
25 ~~his~~ THE JUSTICE'S OR JUDGE'S desire to be retained in office, as  
26 required by this section, ~~then-his~~ THE JUSTICE'S OR JUDGE'S  
27 office shall become vacant upon expiration of the term for which  
28 such justice or judge was serving.

29 40. Option for counties with less than six hundred  
30 thousand persons

31 Section 40. Notwithstanding any provision of this article  
32 to the contrary, any county having a population of less than ~~two~~  
33 SIX hundred ~~fifty~~ thousand persons, ~~—~~ according to the most  
34 recent United States census, ~~—~~ may choose to select its judges of  
35 the superior court or of courts of record inferior to the  
36 superior court as if it had a population of ~~two~~ SIX hundred  
37 ~~fifty~~ thousand or more persons. Such choice shall be determined  
38 by vote of the qualified electors of such county voting on the  
39 question at an election called for such purpose by resolution of  
40 the board of supervisors of such county. If such qualified  
41 electors approve, the provisions of sections 12, 28, 30, 35,  
42 ~~through~~ 37, 38, 39, 41 and 42 shall apply as if such county had  
43 a population of ~~two~~ SIX hundred ~~fifty~~ thousand persons or more.

41. Superior court divisions: commission on trial  
court appointments: membership: terms

A. Except as otherwise provided, judges of the superior court in counties having a population of ~~two~~ SIX hundred ~~fifty~~ thousand persons or more according to the most recent United States census shall hold office for a regular term of four years.

B. There shall be a nonpartisan commission on trial court appointments for each county having a population of ~~two~~ SIX hundred ~~fifty~~ thousand persons or more according to the most recent United States census which shall be composed of the following members:

1. The chief justice of the supreme court, who shall be the chairman of the commission. In the event of the absence or incapacity of the chairman the supreme court shall appoint a justice ~~thereof~~ OF THE SUPREME COURT to serve in ~~his~~ THE JUSTICE'S place and stead.

2. Five attorney members, none of whom shall reside in the same supervisorial district and not more than three of whom shall be members of the same political party, who are nominated by the board of governors of the state bar of Arizona and who are appointed by the governor subject to confirmation by the senate in the manner prescribed by law.

3. Ten nonattorney members, no more than two of whom shall reside in the same supervisorial district.

C. At least ninety days ~~prior to~~ BEFORE a term expiring or within twenty-one days of a vacancy occurring for a nonattorney member on the commission for trial court appointments, the member of the board of supervisors from the district in which the vacancy has occurred shall appoint a nominating committee of seven members who reside in the district, not more than four of whom may be from the same political party. The ~~make-up~~ MAKEUP of the committee ~~shall~~, to the extent feasible, SHALL reflect the diversity of the population of the district. Members shall not be attorneys and shall not hold any governmental office, elective or appointive, for profit. The committee shall provide public notice that a vacancy exists and shall solicit, review and forward to the governor all applications along with the committee's recommendations for appointment. The governor shall appoint two persons from each supervisorial district who shall not be of the same political party, subject to confirmation by the senate in the manner prescribed by law.

D. In making or confirming appointments to trial court commissions, the governor, the senate and the state bar shall

endeavor to see that the commission reflects the diversity of the county's population.

E. Members of the commission shall serve staggered four year terms. ~~, except that initial appointments for the five additional nonattorney members and the two additional attorney members of the commission shall be designated by the governor as follows:~~

~~1. One appointment for a nonattorney member shall be for a one-year term.~~

~~2. Two appointments for nonattorney members shall be for a two-year term.~~

~~3. Two appointments for nonattorney members shall be for a three-year term.~~

~~4. One appointment for an attorney member shall be for a one-year term.~~

~~5. One appointment for an attorney member shall be for a two-year term.~~

F. Vacancies shall be filled for the unexpired terms in the same manner as the original appointments.

G. Attorney members of the commission shall have resided in this state and shall have been admitted to practice in this state by the supreme court for at least five years and shall have resided in the supervisorial district from which they are appointed for at least one year. Nonattorney members shall have resided in this state for at least five years, shall have resided in the supervisorial district for at least one year before being nominated and shall not be judges, retired judges ~~nor~~ OR admitted to practice before the supreme court. None of the attorney or nonattorney members of the commission shall hold any governmental office, elective or appointive, for profit and no attorney member is eligible for appointment to any judicial office of this state until one year after membership in the commission terminates.

H. No person other than the chief justice shall serve at the same time as a member of more than one judicial appointment commission.

I. The commission shall submit the names of not less than three individuals for nomination for the office of ~~the~~ superior court judge pursuant to section 37 of this article.

J. Prior to making recommendations to the governor, the commission shall conduct investigations, hold public hearings and take public testimony. An executive session as prescribed by rule may be held upon a two-thirds vote of the members of the commission in a public hearing. Final decisions as to recommendations shall be made without regard to political



1       affiliation in an impartial and objective manner. The  
2       commission shall consider the diversity of the county's  
3       population and the geographical distribution of the residences  
4       of the judges throughout the county, however the primary  
5       consideration shall be merit. Voting shall be in a public  
6       hearing. The expenses of meetings of the commission and the  
7       attendance of members thereof for travel and subsistence shall  
8       be paid from the general fund of the state as state officers are  
9       paid, upon claims approved by the chairman.

10       K. After public hearings the supreme court shall adopt  
11       rules of procedure for the commission on trial court  
12       appointments.

13       ~~L. The members of the commission who were appointed~~  
14       ~~pursuant to section 36 of this article prior to the effective~~  
15       ~~date of this section may continue to serve until the expiration~~  
16       ~~of their normal terms. All subsequent appointments shall be~~  
17       ~~made as prescribed by this section.~~

18       2. The Secretary of State shall submit this proposition to the voters  
19       at the next general election as provided by article XXI, Constitution of  
20       Arizona.